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PERMITTING AMENDMENTS TO BILLS IMPLEMENTING TRADE AGREEMENTS UNDER SECTION 151(d) OF THE TRADE ACT OF 1974 IF SUCH AMENDMENTS RELATE TO THE DOMESTIC OR FOREIGN WATERBORNE COMMERCE OF THE UNITED STATES

SEPTEMBER 25, 1987.—Ordered to be printed

Mr. FORD, from the Committee on Rules and Administration, submitted the following

REPORT

[To accompany S. Res. 288, an original resolution reported without amendment]

The Committee on Rules and Administration, having considered an original resolution reports favorably thereon without amendment and recommends that the resolution be agreed to.

BACKGROUND AND PURPOSE

S. Res. 288 is an original resolution intended to modify the procedure in the Senate applicable to trade agreements submitted pursuant to the Trade Act of 1974 (19 U.S.C. 2101 et seq.), to permit amendments to approval resolutions and implementing bills where such amendments relate to the domestic or foreign waterborne commerce of the United States. Such amendments are not required, but merely permitted.

On August 4, 1987, the chairman and ranking minority member of this committee wrote to the U.S. Trade Representative, Mr. Yeutter, and the Secretary of the Treasury, Mr. Baker, urging that changes in U.S. maritime policy not be included in the trade agreement now under negotiation, and requesting assurances of such exclusion. Failing such assurances, the authors of the letter noted their intention to initiate for committee and Senate approval the procedural change contained in S. Res. 288. That letter and the two responses are set forth below:

S683-10

U.S. SENATE,
Washington, DC, August 4, 1987.

Hon. CLAYTON YEUTTER,
U.S. Trade Representative, Washington, DC.

Hon. JAMES A. BAKER, III,
Secretary of the Treasury, Chairman, Pro Tem, Economic Council, Washington, DC.

GENTLEMEN: As Chairman of the Senate Rules Committee and as Ranking Minority Member, we have recently been apprised of the plans to establish a Free Trade Area agreement (FTA) between the United States and Canada. It is our understanding that some 68 different services are to be considered but it is unclear how these services shall be effected although it is clear that they will be effected. We further understand that the agreement and the necessary implementing legislation is following the "fast track" legislative route which, under the prevailing rules, leaves little time for the necessary Committee consideration and prohibit any amendment regardless of merit.

What is particularly cause for concern is the inclusion of "Water (Maritime) transportation." It is understood that the existing legislation will not be reached by the agreement, but any amendment or modification to existing legislation will bring the pre-existing laws under the dominion of the FTA and any new legislation must conform to that agreement. In effect, what is proposed is to usurp the Congressional right of determining the application of the laws it passes. It also usurps the ability because of the particular time frames in the procedures for proper consideration of laws that have been on the books, in some cases, almost 200 years.

In the case of the Maritime industry, some of our present laws were passed in the very early Congresses and remain in law today, e.g., certain cabotage restrictions. Congress also has long earmarked certain preference cargoes for U.S.-Flag vessels, a practice that is worldwide. The place of the construction of U.S.-Flag vessels, their safety requirements, as well as the crewing requirements, have been a matter of Congressional prerogative since the inception of the U.S.-Flag fleet. Congress, without restraints, must continue to control those laws and not be subservient to foreign considerations. To be so is not in the best interests of the United States. The national defense and national security interests of the United States, which have long included the U.S.-Flag Merchant Marine as an integral part, must not be compromised by what is virtually a nonreciprocal agreement with a foreign government, albeit a friendly neighbor. Congress must be given the opportunity to fully explore and, after proper hearings and proper considerations by the Committee without restrictive time frames, to evaluate any changes in any such legislation. The legislation authorizing the fast track approach and the statutory procedures are clear, but what is also clear is the right of either House to amend those procedures. See 19 U.S.C.A. § 2191(a)(2).

Therefore, we must advise that, if the Maritime services are not dropped from this agreement, we shall ask the Rules Committee to review the necessity of a change in the rules which will allow the Senate to review the procedure so that amendments and deletions

will be allowed to the FTA and its implementing statute and such other changes as the Committee may feel desirable. Clearly, there could be no objection if what is attempted to be established by the equivalent of executive declaration is placed before the Congress in a normal fashion for normal considerations.

We await your prompt advice.

Sincerely,

WENDELL H. FORD.
TED STEVENS.

THE SECRETARY OF THE TREASURY,
Washington, August 21, 1987.

Hon. WENDELL H. FORD,
Chairman, Committee on Rules and Administration,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your August 4 letter proposing that the Administration refrain from including maritime programs within the Free Trade Area (FTA) negotiations with Canada.

The Economic Policy Council is reviewing major topics in the FTA negotiations, including the issue you have raised. I appreciate your concern that grandfathering the current programs under the FTA would curtail Congressional ability to increase the protection of the U.S. maritime industry vis-a-vis Canada. The Administration will be consulting with the Congress on this issue and will make every effort to avoid an agreement that the Congress could find troubling in this area.

I appreciate being kept informed of your views.

Sincerely,

JAMES A. BAKER, III.

OFFICE OF THE U.S. TRADE REPRESENTATIVE,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, September 17, 1987.

Hon. WENDELL FORD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FORD: I am replying to your August 4 letter to Secretary Baker and Ambassador Yeutter concerning your opposition to the inclusion of maritime services in the Free Trade Agreement with Canada.

Your letter raises important questions involving U.S. commercial and national security interests in the maritime area, and the Congressional prerogatives to amend existing laws in a matter that will protect these interests. Please be assured that this matter is receiving careful attention at the highest levels in the Administration.

As the deadline for the trade talks approaches, we are contiuing to review the possible consequences of any agreement incorporating maritime provisions. No decision has yet been taken as to whether to exclude entirely maritime services from the Agreement. However, I can assure you that we will not agree to any obligation under the FTA that would require us to decrease the level of pro-

tection or preference for the U.S. maritime industry afforded by existing law. In other words, existing legislation and practice will not be subject to the provisions of the FTA, even if there is an amendment or modification to such legislation. On the other hand, in the event maritime services are included in the FTA, any future measures that would seek to increase the existing level of protection or preference for the U.S. maritime industry would have to conform to the FTA to the extent of the increase. Furthermore, we will not agree to any provision that would require us to provide any financial assistance to Canadian vessels under any circumstances.

The fast track procedures have been a part of our trade agreement process since the Trade Act of 1974. They represent an essential element of a carefully crafted balance between Congressional and Executive responsibilities. The process has served the interests of the United States well. This Administration, as others before it, will fully meet its obligations to consult with the Congress and the private sector on what combination of elements we can get Canada to agree to, and ultimately whether such an agreement is in our national interests.

We will keep you apprised of developments in the negotiations relating to this issue.

Sincerely,

PETER O. MURPHY,
Ambassador and Chief Negotiator.

The committee voted by voice vote to report S. Res. 288 to the Senate at its September 23, 1987, meeting. Senator Helms asked to be recorded as opposed to reporting this resolution.

SUMMARY EXPLANATION OF THE RESOLUTION

Rulemaking is a power accorded independently to each House by article I, section 5, of the Constitution. "Fast-track" legislative procedures specified in the Trade Act of 1974, including section 151(d) thereof, were enacted expressly as an exercise of the rulemaking power of each House of Congress. The Act acknowledges that the fast-track procedures are "deemed a part of the rules of each House, respectively" and therefore recognizes "the Constitutional right of either House to change the rules . . . at any time, in the same manner and to the same extent as in the case of any other rule of that House," 19 U.S.C. 2191. Rule 25 of the Standing Rules of the Senate gives the Rules Committee jurisdiction over "Congressional organization relative to rules and procedures, and Senate rules and procedures. . .".

Under the fast-track procedures, the free trade agreement and its implementing statute, when presented to Congress, must be acted upon with 60 days. Debate on an implementing bill or approval resolution is limited to 20 hours and amendments are prohibited. S. Res. 288 would provide that the prohibition against amendments "shall not apply to an amendment to an implementing bill or approval resolution relating to the domestic or foreign waterborne commerce of the United States."

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